

D. NEIL PRICE
DEPUTY ATTORNEY GENERAL
IDAHO PUBLIC UTILITIES COMMISSION
PO BOX 83720
BOISE, IDAHO 83720-0074
(208) 334-0314
Idaho State Bar No. 6864

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Street Address for Express Mail:

472 W. WASHINGTON
BOISE, IDAHO 83702-5918

Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE APPLICATION)
OF TRACFONE WIRELESS, INC. FOR) CASE NO. TFW-T-09-01
DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER) PREHEARING ISSUES BRIEF OF
THE COMMISSION STAFF**

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its attorney of record, D. Neil Price, Deputy Attorney General, and, pursuant to the Commission's directive, does hereby submit Staff's *Prehearing Issues Brief* regarding the Application of TracFone Wireless, Inc. for designation as an eligible telecommunications carrier.

I. PROCEDURAL HISTORY

On October 29, 2009, TracFone Wireless, Inc. ("TracFone" or "Company") filed an Application, pursuant to Section 214(e)(2) of the Communications Act of 1934, for designation as an eligible telecommunications carrier ("ETC"). *Application* at 1. TracFone is seeking ETC designation solely for the purpose of providing Lifeline service under its trade name SafeLink Wireless and will not seek funds from the federal Universal Service Fund. *Id.*

On January 15, 2010, Commission Staff submitted a decision memorandum recommending that the Commission deny TracFone's Application. On February 5, 2010, the Commission issued an Order denying TracFone's Application. *See* Order No. 30996.

On March 1, 2010, TracFone filed a Petition for Reconsideration and an Amended Application for ETC designation. On March 8, 2010, Commission Staff filed an Answer to

TracFone's Petition. Subsequently, TracFone submitted a letter withdrawing its Petition for Reconsideration and expressing its support for a process that would facilitate a Staff review and recommendation regarding its Amended Application within 60 days.

On April 26, 2010, Staff and TracFone filed a *Joint Stipulation Regarding First Production Requests of the Commission Staff*.

On May 14, 2010, CTC Telecom, Inc. dba Snake River PCS ("CTC") and Idaho Telecom Alliance ("ITA") each filed, pursuant to Commission Rule of Procedure 71, IDAPA 31.01.01.071, a *Motion to Intervene Out of Time and Petition to Intervene*.

On May 19, 2010, TracFone filed, pursuant to Commission Rule of Procedure 75, IDAPA 31.01.01.075, a *Motion in Opposition of TracFone Wireless, Inc. to Petitions to Intervene of CTC Telecom, Inc. dba Snake River PCS and Idaho Telecom Alliance*.

On May 28, 2010, the Commission issued an Order granting CTC and ITA's Petitions to Intervene. See Order No. 31096. The Commission also mandated that the parties hold a scheduling conference "in order to develop an appropriate schedule going forward in this case, including a hearing if needed." *Id.* at 3.

On August 13, 2010, TracFone filed a *Notice of Expanded Lifeline Offering of TracFone Wireless, Inc.* TracFone notified the Commission that, commencing on August 16, 2010, its Lifeline customers in Idaho would be given the option to choose one of three different monthly plans, more fully described in the Notice.

On November 15, 2010, representatives for TracFone, ITA, CTC and Commission Staff convened a scheduling conference at the Commission's offices and forwarded their recommendations to the Commission.

On November 24, 2010, the Commission ordered the parties to submit a prehearing brief outlining the legal and factual issues involved in the cases no later than December 17, 2010. See Order No. 32127.

II. STATEMENT OF JURISDICTION

"The [Commission] is hereby vested with power and jurisdiction to supervise and regulate every public utility in the state." *Idaho Code* § 61-501. The Commission "has full jurisdiction and authority to designate carriers as ETCs pursuant to the federal Telecommunications Act of 1996. . . ." Order No. 29841 at 2.

In order to be designated as an ETC, the telecommunications provider must: (1) be a “common carrier” as defined by 47 U.S.C. § 153(10); (2) offer throughout its proposed service areas the universal services set forth in 47 C.F.R. § 54. 101(a) either by using its own facilities or a combination of its own facilities and the resale of another carrier’s services; and (3) must advertise the availability of its universal service offering and the charges therefore using media of general distribution. 47 U.S.C. § 214(e)(1); *Id.* at 3. Additionally, TracFone has the burden of demonstrating that the public interest would be served by granting its ETC Application. *Id.* at 8.

III. ISSUES FOR CONSIDERATION

Commission Staff believes that the Commission’s decision regarding TracFone’s Application for designation as an ETC in Idaho hinges upon whether granting the Application would be “consistent with the public interest, convenience, and necessity. . . .” *Id.* at 3.

Staff has serious concerns as to whether the usage “plans” referenced in TracFone’s filings will offer fair and adequate pricing standards for Idaho’s low-income consumers – the primary market for TracFone’s service offerings. *See TracFone’s Notice of Expanded Lifeline Offering* at 1-2. TracFone markets its SafeLink Wireless Lifeline service as a “free” plan. However, all three Lifeline plans offered by the Company contain a finite number of “free minutes” ranging from 250 to 68 “free minutes” per month. *Id.* Staff is concerned that the aforementioned plans act as an enticement for low-income consumers to enter into agreements for ostensibly “free” service with the strong likelihood that these consumers will later be subjected to substantial overage charges.

These concerns are exacerbated by TracFone’s lack of commitment to contribute to funds that support telecommunications services in Idaho: the Idaho Telecommunications Service Assistance Program (“ITSAP”), Telecommunications Relay Services (“TRS”) Fund, and the E911 Service Fund.

The ITSAP was instituted in order to “maximize federal ‘lifeline’ and ‘link-up’ contributions to Idaho’s low-income consumers.” *Idaho Code* § 56-901(1). The Program depends upon the support of telecommunications carriers¹ operating in Idaho, particularly those carriers who, like TracFone, directly market their service offerings to low-income consumers. Recipients of ITSAP funding must “meet narrowly targeted eligibility criteria based solely on

¹ A “telecommunications carrier” is defined by statute as any “telephone corporation providing . . . personal communications services and mobile radio services for compensation.” *Idaho Code* § 56-901(2).

income or factors directly related to income established by the department of health and welfare.” *Idaho Code* § 56-901(3). Staff believes that, if TracFone is granted ETC status, there will be an enormous amount of overlap between ITSAP funding recipients and TracFone’s customer base.

TracFone has also failed to commit to contributing to the TRS Fund. The TRS Fund offers essential services to a segment of Idaho’s population, hearing-impaired or speech-impaired persons, which is disproportionately economically disadvantaged and obviously included within TracFone’s targeted Idaho market.

. . . Telephone corporations providing interstate or intrastate telephone services provide telecommunications relay services (TRS) for individuals who are hearing-impaired or speech-impaired that will allow them to engage in telephone communication in a manner functionally equivalent to that of individuals without hearing or speech impairments.

Idaho Code § 61-1301. Thus, Staff believes that any ETC certification should be contingent upon the Company contributing to the TRS Fund.

Finally, TracFone boasts access to emergency services and that its customers will receive an E911-compliant handset free of charge. *See First Amended Application* at 24. Nevertheless, the Company has made no indication or assertion that it plans to pay into the fund that supports these critical emergency services. Thus, Staff questions whether it is in the public interest of Idaho customers to allow TracFone to be designated as an ETC without requiring the Company to collect and remit E911 fees.

CONCLUSION

Staff respectfully requests that the Commission proceed in this case pursuant to Modified Procedure. The Commission should establish a reasonable comment period which would allow the intervening parties, CTC and ITA, to fully participate in the process. Staff cannot identify any relevant factual issues that are subject to dispute in this case.

TracFone has been relatively candid in its various filings regarding the business model it would employ in Idaho if the Company were granted ETC status. Therefore, a technical hearing is not warranted because it would not significantly inform the Commission’s decision in this matter.

Respectfully submitted this 17th day of December 2010.

A handwritten signature in black ink, appearing to read 'Neil Price', written over a horizontal line.

Neil Price
Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of December, 2010 I served the foregoing document, *Prehearing Issues Brief of the Commission Staff*, in Case No. TFW-T-09-01 via electronic mail upon the following parties:

CTC Telecom, Inc. dba Snake River PCS:

Molly O'Leary, ISB# 4996
Richardson & O'Leary PLLC
E-mail: molly@richardsonandoleary.com

Idaho Telecom Alliance:

Cynthia A. Melillo, ISB# 5819
Givens Pursley LLP
E-mail: cam@givenspursley.com

TracFone Wireless, Inc.

Dean J. Miller, ISB# 1968
McDevitt & Miller, LLP
E-mail: joe@mcdevitt-miller.com



Neil Price
Deputy Attorney General